

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

JOSEPH PETER SCHMITT, PRO SE,)
PLAINTIFF,)
)
v.) C.A. No. 2004-10451-RWZ
)
JEFFREY SMITH, ET AL.,)
DEFENDANTS)

EMERGENCY REPLY TO DEFENDANTS
OPPOSITION TO PLAINTIFF'S MOTION
TO COMPEL

Now comes the above-named Plaintiff and makes an emergency reply to defendants opposition to Plaintiff's motion to compel.

As reason therefore, the Plaintiff states the following:

1. Defendants claim that Michael T. Maloney was the Commissioner for the Commonwealth's Department of Correction at times relevant to the complaint but is no longer employed by the Department of Correction and because of this the Department of Correction can not accept service for this defendant without his express request.
2. Defendants rely on Mass. Gen. Laws c. 66 §10 in relevant part:

"The home address and home telephone number of law enforcement, judicial, prosecutorial, department of youth services, department of social services, department of correction and any other public safety and criminal justice system personnel **shall not be public records** in the custody of the employers of such personnel or the

public employee retirement administration commission or any retirement board established under chapter 32 **and shall not be disclosed**, but such information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees under chapter 180 or to a criminal justice agency as defined in section 167 of chapter 6 (emphasis added)."

3. The above-noted Mass. Gen. Laws clearly pertains to personnel actively employed by such agencies. The named defendant, Michael T. Maloney has been fired from his position at the Massachusetts Department of Correction and nolonger has the privileges that are related with his former position. Defendants counsel clearly states that Michael T. Maloney is nolonger employeed by the Commonwealth's Department of Correction, yet counsel still seeks to use Mas. Gen. Laws designed for employees of the Commonwealth's various agencies.

4. Defendant, Massachusetts department of correction appears to have knowlege of the present place of employment but make no attempt to provide this information to the Plaintiff so service may be conducted.

5. Defendants have no lawful right to withhold requested information and by doing so obstruct justice from being served and violate my substantial due process rights.

WHEREFORE, for all the stated reasons Plaintiff respectfully requests this Honorable Court GRANT Plaintiffs motion to COMPEL and ORDER the Defendants to produce the home address and place of employment address of Michael T. Maloney so Plaintiff may complete service.

Dated: December 27, 2004

Respectfully Submitted,

PLAINTIFF



Joseph Peter Schmitt, Pro se.
Namansket Correctional Center
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Bridgewater, Massachusetts
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I hereby certify that a true copy of the above document was served upon defendants counsel, Phillip W. Silva, by pre paid first class mail on December 28, 2004.



Joseph Peter Schmitt, pro se